

THE BRANDI LAW FIRM
 THOMAS J. BRANDI #53208
 DANIEL DELL'OSSO #118203
 BRIAN J. MALLOY #234882
 354 Pine Street, Third Floor
 San Francisco, CA 94104
 Telephone: (415) 989-1800
 Facsimile: (415) 989-1801

JAMES R. DONAHUE, #105106
 CAULFIELD DAVIES & DONAHUE
 80 Iron Point Circle, #105
 Folsom, CA 95630
 Telephone: (916) 817-2900
 Facsimile: (916) 817-2644

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-OAKLAND DIVISION

DEBORAH GETZ, individually and as a)	NO. CV 07 6396 CW
surviving heir of decedent KRISTOFER D. S.)	
THOMAS; RODNEY THOMAS, individually)	JOINT CASE MANAGEMENT
and as a surviving heir of decedent,)	CONFERENCE STATEMENT
KRISTOFER D. S THOMAS; MARY)	AND [PROPOSED] ORDER
DUFFMAN, individually and as a surviving)	
heir of decedent, SCOTT E. DUFFMAN;)	
SOPHIA DUFFMAN, a minor, individually)	
and as a surviving heir of decedent SCOTT E.)	Date: April 1, 2008
DUFFMAN, by and through her Guardian ad)	Time: 2:00 p.m.
Lite, MARY DUFFMAN; CHRISTINE)	
VAUGHN, individually and as a surviving)	Courtroom: 2
heir of decedent, TRAVIS R. VAUGHN;)	Judge: Honorable Claudia Wilken
BRAD VAUGHN, individually and as a)	
surviving heir of decedent, TRAVIS R.)	
VAUGHN; JILL GARBS, individually and as)	
a surviving heir of decedent RYAN GARBS;)	
DOUG GARBS, individually and as a)	
surviving heir of decedent, RYAN GARBS;)	
JORDAN LANHAM; JERRY GOLDSMITH;)	
RYANNE NOSS, individually and as spouse)	
of SCOT NOSS; TIMOTHY BRAUCH;)	
CHRIS TRISKO, MARK DANIEL)	

1 HOUGHTON,)
 2)
 3 Plaintiffs,)
 4 vs.)
 5)
 6 THE BOEING COMPANY, a corporation;)
 7 HONEYWELL INTERNATIONAL, INC., a)
 8 corporation; GOODRICH CORPORATION, a)
 9 corporation; BF GOODRICH AEROSPACE;)
 CHANDLER EVANS CONTROL)
 SYSTEMS; GENERAL ELECTRIC and)
 DOES 1 through 200, inclusive,)
 Defendants.)

10 The parties jointly submit this Case Management Statement pursuant to Civil Local
 11 Rule 16-9(a).

12 **1. Jurisdiction and Service**

13
 14 The Boeing Company ("Boeing") removed this action based upon the Federal
 15 Officer Removal statute, 28 U.S.C. § 1442(a)(1).

16 Boeing, Honeywell International, Inc. ("Honeywell"), and Goodrich Pump and
 17 Engine Control Systems, Inc. ("Goodrich") have been served and have filed answers.
 18 Goodrich states that it was erroneously named in the complaint as Goodrich Corporation
 19 and BF Goodrich Aerospace. Chandler Evans Control Systems is no longer in existence,
 20 will not be appearing, and Goodrich is the successor to Chandler Evans Control Systems
 21 for purposes of this case. General Electric has been dismissed without prejudice.

22 Honeywell filed a Motion to Transfer Venue on January 10, 2008. That Motion is
 23 still pending before this court.

24 **2. Facts**

25 On February 17, 2007, plaintiffs and/or plaintiffs' decedents (collectively
 26 "plaintiffs") were servicemen aboard a U.S. Army Special Operations Aviation Regiment
 27 ("SOAR") MH-47E Chinook helicopter bearing Tail #94-00472 ("subject helicopter") in
 28

1 the Shahjoi District of the Zabul Province, in southeastern Afghanistan when it crashed,
2 resulting in multiple deaths and injuries.

3 The cause of the crash is disputed. Plaintiffs allege that defects contained in the
4 subject helicopter and its component parts caused the subject helicopter to suffer a sudden,
5 unexpected loss of power, lose control, and crash to the ground. Defendants contest the
6 allegations and assert various defenses, including the non-justiciability of cases arising in
7 circumstances of war and the Government Contractor Defense.

8 Plaintiffs Mark Daniel Houghton, Chris Trisko, Tim Brauch, Jordan Lanham and
9 Jerry Goldsmith were severely injured in the accident. Mr. Houghton and Mr. Trisko
10 remain on active duty with the U.S. Air Force and Mr. Lanham remains on active duty
11 status with the U.S. Army. Mr. Trisko is stationed in North Carolina. Mr. Houghton and
12 Mr. Lanham are currently stationed in Georgia. Mr. Goldsmith was unable to physically
13 return to active duty and was honorably discharged.

14 Plaintiff RyAnne Noss is bringing a loss of consortium claim based upon the
15 injuries suffered by her husband Scot Noss, who was also in the accident and remains in a
16 coma. Scot and RyAnne Noss are currently in Florida where he remains hospitalized. He
17 is still a member of Armed Forces but it is not known for how much longer he will be in
18 Florida.

19 The remaining eight plaintiffs are the surviving heirs of four servicemen who died
20 as a result of the accident. Plaintiffs Deborah Getz and Rodney Thomas, who reside in
21 California, are the parents of Kristopher Thomas. Jill and Doug Garbs, who reside in
22 Illinois, are the parents of Ryan Garbs. Mary Duffman and her daughter, Sophia Duffman,
23 presently reside in North Carolina, and are the surviving heirs of Scott Duffman. Christine
24 and Brad Vaughn, who reside in Iowa, are the parents of Travis Vaughn.

25 Kristopher Thomas, son of Plaintiffs Deborah Getz and Rodney Thomas, was a
26 member of B Company, 3rd Battalion, 75th Ranger Regiment (the "75th Ranger
27 Regiment") headquartered at Fort Benning, Georgia at the time of his death. Ryan Garbs,
28 son of Plaintiffs Jill Garbs and Doug Garbs, was also a member of the 75th Ranger
Regiment from Fort Benning, Georgia. Scott Duffman, whose surviving heirs are

1 Plaintiffs Mary Duffman and Sophia Duffman, was a member of the 24th Special Tactics
2 Squadron based out of North Carolina. Travis Vaughn, son of Plaintiffs Christine Vaughn
3 and Brad Vaughn, was a member of B Company, 2nd Battalion, 160th Special Operations
4 Aviation Regiment (the "160th") headquartered in Fort Campbell, Kentucky.

5 **3. Legal Issues**

- 6 a. Negligence and strict liability for the alleged defects in the design and
7 manufacture of the subject helicopter and its component parts; breach of express
8 and implied warranty;
9 b. The applicability of various affirmative defenses, including the Government
10 Contractor Defense, the states secrets privilege, the political question doctrine and
11 the "combatant exception" to the Federal Tort Claims Act; and
12 c. Causation and damages.

13 **4. Motions**

14 At this time the parties anticipate bringing the following motions: motions to
15 dismiss, motions *in limine*, motions to compel, if necessary, and various motions for
16 summary judgment based on substantive and legal grounds.

17 **5. Amendment of Pleadings**

18 Plaintiffs will seek leave to amend to add additional plaintiffs no later than 60 days
19 from the date the Court decides defendant Honeywell's transfer of venue motion.

20 Defendant Goodrich will add an affirmative defense based on the combatant
21 activities exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(j), which it will seek
22 to accomplish by stipulation of plaintiffs in accordance with the same timeframe described
23 for plaintiffs to seek leave to amend their complaint.

24 **6. Evidence Preservation**

25 Parties are taking, and will continue to take, all reasonable steps to preserve any
26 evidence relevant to the issues reasonably evident in this lawsuit. Parties are not presently
27 aware of any document destruction programs that would apply in this case.
28

1 **7. Disclosures**

2 Parties will exchange initial disclosures either within fourteen days after the
3 Court's Order if the Court denies defendant Honeywell's transfer of venue motion or upon
4 a date set by the United States District Court for the District of Arizona if the Court grants
5 defendant Honeywell's motion to transfer venue.

6 Due to the nature of the technical information involved in this case, relevant
7 discovery topics include: (1) the design and manufacture of the subject MH-47E
8 helicopter, (2) manuals, technical specifications, engineering recommendations and other
9 technical documents related to the helicopter, (3) helicopter design drawings and other
10 data, (4) inspection, maintenance, and repairs of the subject helicopter, and (5) plaintiffs'
11 damages, as reflected in employment, medical records, and other private documents.

12 Defendants believe that in accordance with International Traffic in Arms
13 Regulations (ITAR) (22 C.F.R. Section 120.1 et seq.) certain technical information
14 including "defense articles" and "defense services" related to the Army Special Operations
15 Aviation Regiment (SOAR) MH-47E helicopter shall not be disclosed to foreign persons.
16 In order to comply with these federally-mandated regulations, a protective order that
17 addresses the ITAR-controlled data that is likely to be at issue during discovery in this case
18 will be required.

19 Additionally, discovery related to these and other topics will also necessitate the
20 disclosure of what defendants and the US Army consider to be confidential and sensitive
21 information (much of which is also ITAR-controlled) such that a protective order is also
22 necessary for that purpose. Honeywell and Boeing have proposed a protective order for
23 confidential information relating to the Army Special Operations Aviation Regiment
24 (SOAR) MH-47E Chinook helicopter, engine, and component parts of the helicopter to
25 Plaintiffs.

26 Plaintiffs do not believe a protective order is necessary at this time.

27 Defendants intend to file a motion for a Protective Order before the time initial
28 disclosures need to be made.

8. Discovery Taken to Date

Discovery has not yet commenced.

Plaintiffs intend to proceed with discovery.

Honeywell intends to file a motion to dismiss based on the Political Question Doctrine pending the decision of the Motion to Transfer. Defendants will seek to stay discovery while the motion to dismiss based on the Political Question Doctrine is pending. Defendants will also seek to have discovery limited to the issue of the Government Contractor Defense pending a decision on a motion for summary judgment on that issue.

Defendants note that the parties will require extensive discovery of military records, personnel, and tangible items in the military's possession. The parties anticipate delay over access to and release of this information from the government. The U.S. Army's investigation of the accident giving rise to this suit is ongoing.

The parties request the following departure from the discovery rules set forth in the Federal Rules of Civil Procedure and Civil Local Rules: 50 depositions per side; provided, however, that the parties may take additional depositions over this limit upon stipulation of all parties or by leave of Court.

The parties anticipate taking discovery on the following subjects:

1. The design and manufacture of the subject helicopter along with its component parts;
2. The design and manufacture of the engines of the subject helicopter;
3. The design and manufacture of the Full Authority Digital Engine Control (“FADEC”) on the subject helicopter;
4. The design and manufacture of the Digital Electronic Control Unit (“DECU”) including all computer software and hardware related thereto on the subject helicopter;
5. Other incidents and warranty claims;
6. Causation;

7. The applicability of the Government Contractor Defense;
8. The applicability of the states secrets privilege;
9. The damages of plaintiffs;
10. The maintenance and operational history of the subject helicopter; and
11. The nature of the mission of the subject helicopter.

9. Class Action

Not applicable.

10. Related Cases

There are no related cases.

11. Relief

Plaintiffs Mark Daniel Houghton, Chris Trisko, Tim Brauch, Jordan Lanham and Jerry Goldsmith seek general and special damages, costs of suit, and other relief as the Court deems proper.

Plaintiff RyAnne Noss seeks loss of consortium damages, costs of suit, and other relief as the Court deems proper.

Plaintiffs Deborah Getz, Rodney Thomas, Jill and Doug Garbs, Mary and Sophia Duffman, Christine Vaughn and Brad Vaughn seek wrongful death damages, costs of suit, and other relief as the Court deems proper.

12. Settlement and ADR

The parties have not participated in any settlement discussions. The parties agree to mediation, but believe mediation is premature at this early stage. The parties request that mediation not be automatically set for 90 days after the case management conference. Parties believe that a substantial amount of discovery will be required in order to have a productive mediation.

1 The parties will comply with ADR Local Rule 3-5.

2 **13. Consent to Magistrate Judge**

3 Parties do not consent to assignment of this case to a magistrate judge.

4 **14. Other References**

5 None at this time.

6 **15. Narrowing of the Issues**

7 None at this time.

8 **16. Expedited Schedule**

9 The parties do not believe an expedited schedule is appropriate for this case.

10 **17. Scheduling**

11 Plaintiffs request the following schedule:

12 Initial Expert Disclosures: 120 days prior to trial

13 Rebuttal Expert Disclosures: 90 days prior to trial

14 Discovery cutoff: 75 days prior to trial for fact discovery; 45 days for expert
15 depositions

16 Deadline for hearing on dispositive motions: 30- 45 days prior to trial

17 Pretrial Conference: 30 days prior to trial date

18 Trial: June 2009

19 All dates are mutual.

20 Defendants request the following schedule:

21 Based on the number of parties, complexity of issues and amount of planned
22 discovery, and due to the anticipated delay in obtaining necessary evidence from the
23 United States military, Defendants believe that this case cannot be ready for trial before
24 June 2010. Defendants also propose that experts be disclosed on a sequenced basis, with
25 Plaintiffs' expert disclosures and reports served one month before Defendants' expert
26 disclosures. Defendants thus propose:

27 Plaintiffs' Initial Expert Disclosure: 150 days prior to trial

1 Defendants' Initial Expert Disclosures: 120 days prior to trial
2 Rebuttal Expert Disclosures: 90 days prior to trial
3 Discovery cutoff: 75 days prior to trial for fact discovery; 45 days for expert
4 depositions
5 Deadline for hearing on dispositive motions: 30- 45 days prior to trial
6 Pretrial Conference: 30 days prior to trial date
7 Trial: June 2010

8 **18. Trial**

9 This jury trial is expected to last 20 plus days.

10 **19. Disclosure of Non-Party Interested Entities or Persons**

11 Plaintiffs have complied with Civil L.R. 3-16.

12 Defendant Goodrich has filed the Certification, in which it stated that "Defendant
13 Goodrich Pump and Engine Control Systems, Inc. is wholly owned by Goodrich
14 Corporation", and that there is no further interest to report under Civil L.R. 3-16.

15 Defendant Honeywell has also filed the Certification pursuant to Civil L.R. 3-16,
16 which states that in addition to all the listed plaintiffs, all the listed defendants, Global
17 Aerospace, Inc., is an insurer for defendant Honeywell International Inc.

18 Defendant Boeing has also filed the Certification pursuant to Civil L.R. 3-16,
19 which states that in addition to all of the listed plaintiffs, all of the listed defendants, Astro
20 Ltd., Bermuda and Global Aerospace, Inc., are insurers for defendant The Boeing
21 Company.

22 **20. Other Matters**

23 None.

24 //
25 //
26 //

Respectfully submitted,

Dated: March 25, 2008

THE BRANDI LAW FIRM

By: /s/ Thomas J. Brandi
THOMAS J. BRANDI
Attorney for Plaintiffs

Dated: March 25, 2008

MORRISON & FOERSTER LLP

By: /s/ James W. Huston
James W. Huston

Attorneys for Defendant
HONEYWELL INTERNATIONAL,
INC

Dated: March 25, 2008

PERKINS COIE LLP

By: /s/ Ronald A. McIntire
Ronald A. McIntire
Chung H. Han

Attorneys for Defendant
THE BOEING COMPANY

Dated: March 25, 2008

MENDES & MOUNT, LLP

By: /s/ Garth W. Aubert
Garth W. Aubert
Mark R. Irvine

Attorneys for Defendant
GOODRICH CORPORATION

[PROPOSED] ORDER

The Case Management Statement and Proposed Order is hereby adopted by this Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders:

IT IS SO ORDERED.

Dated: _____

CLAUDIA WILKEN
United States District Court Judge